



April 6, 2001

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## ENGROSSED HOUSE BILL No. 1628

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DIGEST OF HB 1628 (Updated April 4, 2001 1:08 PM - DI 51)

**Citations Affected:** IC 29-2; IC 34-30.

**Synopsis:** Anatomical gifts. Requires a family to honor a decedent's anatomical gift donation and provides that the decedent's family does not have legal standing to refuse to honor the wishes of the decedent to make an anatomical gift donation unless the anatomical gift was revoked by the decedent before the decedent's death or by a guardian in the manner prescribed by law. Establishes a rebuttable presumption that a person who makes a written anatomical gift in compliance with law intended to make an anatomical gift. Provides procedures for ascertaining the donor's intent. Provides immunity from civil liability to a physician who follows a donor's anatomical gift directive. Makes a conforming amendment.

**Effective:** July 1, 2001.

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### Welch, Budak, Grubb

(SENATE SPONSORS — HARRISON, BREAUX, CRAYCRAFT)

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January 17, 2001, read first time and referred to Committee on Judiciary.  
February 14, 2001, amended, reported — Do Pass.  
February 19, 2001, read second time, ordered engrossed.  
February 20, 2001, engrossed.  
March 5, 2001, read third time, passed. Yeas 92, nays 4.

SENATE ACTION

March 7, 2001, read first time and referred to Committee on Judiciary.  
April 5, 2001, amended, reported favorably — Do Pass.

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EH 1628—LS 7300/DI 104+



April 6, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

## ENGROSSED HOUSE BILL No. 1628

A BILL FOR AN ACT to amend the Indiana Code concerning health.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 29-2-16-2.5 IS ADDED TO THE INDIANA CODE  
2       AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3       1, 2001]: **Sec. 2.5. (a) This section applies if:**

4               **(1) a donor makes an anatomical gift in writing under section**  
5               **2(a) of this chapter or IC 9-24-17; and**

6               **(2) the gift is not revoked by:**

7                       **(A) the donor before the donor's death; or**

8                       **(B) a guardian under section 11 of this chapter.**

9       **(b) The individuals identified in section 2(b) of this chapter have**  
10       **no legal standing or authority to:**

11               **(1) modify a deceased donor's gift of any part of the donor's**  
12               **body made in writing under section 2 of this chapter or**  
13               **IC 9-24-17; or**

14               **(2) prevent the donor's anatomical gift from being made.**

15       **(c) This section does not limit the individuals identified in**  
16       **section 2(b) of this chapter from:**

17               **(1) making a gift of all or any part of a decedent's body; or**

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(2) revoking a gift of all or any part of a decedent's body;  
as provided in section 2(b) of this chapter.

(d) Actual notice obtained by:

(1) a recovery agency acting under section 3.5(a) of this chapter; or  
(2) a hospital acting under section 3.5(b) of this chapter;  
of an individual's written anatomical gift that is made under section 2(a) of this chapter or IC 9-24-17 creates a rebuttable presumption that the individual made an anatomical gift for purposes of this section.

(e) Actual notice obtained by:

(1) a recovery agency acting under section 3.5(a) of this chapter; or  
(2) a hospital acting under section 3.5(b) of this chapter;  
of an individual's written revocation of an anatomical gift that is made under section 2(a) of this chapter or IC 9-24-17 creates a rebuttable presumption that the individual revoked the anatomical gift for purposes of this section.

(f) A health care provider is immune from civil liability for following a donor's unrevoked anatomical gift directive under this chapter or IC 9-24-17.

SECTION 2. IC 29-2-16-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3.5. (a) If:

(1) a hospital's designated organ recovery agency determines that an individual whose death is imminent or who has died is medically suitable for organ donation;

(2) a hospital's designated organ recovery agency, in the absence of alternative arrangements by the hospital, and:

(A) using the standards of a potential tissue and eye donor;

(B) using the notification protocol developed by the hospital; and

(C) consulting with the hospital's designated tissue recovery agency and eye recovery agency;

determines that an individual whose death is imminent or who has died is medically suitable for tissue or eye donation;

(3) a hospital's designated tissue recovery agency determines that an individual whose death is imminent or who has died is medically suitable for tissue donation; or

(4) a hospital's designated eye tissue recovery agency determines that an individual whose death is imminent or who has died is medically suitable for eye donation;



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the respective recovery agency shall attempt to ascertain whether the individual has made a written anatomical gift under section 2(a) of this chapter or under IC 9-24-17 and, if so, whether the individual has subsequently revoked the anatomical gift in writing. The recovery agency shall consult with the individuals identified in section 2(b) of this chapter who are reasonably available and may consult with any other sources that are available to the recovery agency.

(b) The recovery agency shall provide to the following any information obtained by the recovery agency under subsection (a):

- (1) The hospital.
- (2) The attending physician.
- (3) The physician who certified the individual's death if there is not an attending physician.

(c) A recovery agency identified in subsection (a) may enter into a written agreement with a hospital to allow the hospital to ascertain whether an individual made a written anatomical gift under subsection 2(a) of this chapter or IC 9-24-17 and whether any subsequent written revocation of the anatomical gift occurred.

(d) The hospital shall provide to the following any information obtained by the hospital under subsection (c):

- (1) The recovery agency.
- (2) The attending physician.
- (3) The physician who certified the individual's death if there is not an attending physician.

(e) A hospital or a recovery agency is immune from civil liability for determining in good faith and in compliance with this section that:

- (1) an individual made a written anatomical gift; or
- (2) an individual subsequently made a written revocation of an anatomical gift.

SECTION 3. IC 29-2-16-4.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4.5. (a) A coroner may release and permit the removal of a part from a body within the coroner's custody, for transplantation or therapy only, if all of the following occur:

- (1) The coroner receives a request for a part from a hospital, physician, surgeon, or procurement organization.
- (2) The coroner makes a reasonable effort, taking into account the useful life of a part, to locate and examine the decedent's medical records and inform individuals listed in section 2(b) of this chapter of their option to make or object to making a gift under



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1 this chapter.

2 (3) The coroner does not know of a refusal or contrary indication  
3 by the decedent or an objection by an individual having priority  
4 to act as listed in section 2(b) of this chapter.

5 (4) The removal will be by:

6 (A) a physician licensed under IC 25-22.5; or

7 (B) in the case of removal of an eye or part of an eye, by an  
8 individual described in section 4(e) of this chapter **and under**  
9 **IC 36-2-14-19.**

10 (5) The removal will not interfere with any autopsy or  
11 investigation.

12 (6) The removal will be in accordance with accepted medical  
13 standards.

14 (7) Cosmetic restoration will be done, if appropriate.

15 (b) If the body is not within the custody of the coroner, the medical  
16 examiner may release and permit the removal of any part from a body  
17 in the medical examiner's custody for transplantation or therapy if the  
18 requirements of subsection (a) are met.

19 (c) A person under this section who releases or permits the removal  
20 of a part shall maintain a permanent record of the name of the  
21 decedent, the individual making the request, the date and purpose of  
22 the request, the body part requested, and the person to whom it was  
23 released.

24 SECTION 4. IC 29-2-16-7.5 IS ADDED TO THE INDIANA CODE  
25 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
26 1, 2001]: **Sec. 7.5. (a) The individual's attending physician, or, if**  
27 **none, the:**

28 (1) physician that certifies the individual's death;

29 (2) hospital where the individual is admitted;

30 (3) hospital where the individual's remains are being kept; or

31 (4) individual identified in section 2 (b) of this chapter;

32 may petition the probate court in the county where the remains of  
33 the individual who is the subject to the petition are located, or the  
34 county in which the individual died, for the information referred  
35 to in subsection (b).

36 (b) A person identified in subsection (a) may petition the  
37 probate court specified in subsection (a) to determine whether the  
38 individual:

39 (1) made a written anatomical gift under section 2(a) of this  
40 chapter or IC 9-24-17, for purposes of section 2.5 of this  
41 chapter; or

42 (2) made a written revocation of an anatomical gift under

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section 2(a) of this chapter or under IC 9-24-17, for purposes of section 2.5 of this chapter.

(c) If the probate court determines under subsection (b) of this chapter that the individual made a written anatomical gift that was not subsequently revoked in writing by the individual, the court shall order that the anatomical gift of an organ, tissue, or an eye be recovered.

(d) The probate court may modify or waive notice and a hearing if the court determines that a delay would have a serious adverse effect on:

(1) the medical viability of the individual; or

(2) the viability of the individual's anatomical gift of an organ, tissue, or an eye.

SECTION 5. IC 34-30-2-123.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 123.5. IC 29-2-16-2.5 (Concerning health care provider immunity and anatomical gifts).**

SECTION 6. IC 34-30-2-123.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 123.7. IC 29-2-16-3.5 (Concerning hospital and recovery agency immunity and anatomical gifts).**

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1628, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 40, delete "hospital, surgeon, or physician" and insert **"health care provider"**.

Page 2, line 40, after "shall" delete "honor" and insert **"follow"**.

Page 2, line 40, delete "deceased".

Page 2, line 41, after "gift" insert **"directive"**.

Page 3, between lines 7 and 8, begin a new paragraph and insert:

**"(e) A health care provider is immune from civil liability for following a donor's unrevoked anatomical gift directive under this chapter or IC 9-24-17."**

Page 3, after line 41, begin a new paragraph and insert:

**"SECTION 4. IC 34-30-2-117.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 117.5. IC 29-2-16-2.5 (Concerning health care provider immunity and anatomical gifts)."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1628 as introduced.)

STURTZ, Chair

Committee Vote: yeas 10, nays 0.

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## SENATE MOTION

Mr. President: I move that Senator Craycraft be added as cosponsor of Engrossed House Bill 1628.

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## COMMITTEE REPORT

Mr. President: The Senate Committee on Judiciary, to which was referred House Bill No. 1628, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 17.

Page 2, delete lines 1 through 26.

Page 2, line 30, after "gift" insert **"in writing"**.

Page 2, line 30, after "under" insert **"section 2(a) of"**.

Page 2, line 35, delete "described" and insert **"identified"**.

Page 2, line 38, delete "as described in" insert **"made in writing under"**.

Page 2, line 38, delete "chapter;" and insert **"chapter or IC 9-24-17;"**.

Page 2, line 39, after "the" insert **"donor's"**.

Page 2, delete lines 40 through 42, begin a new paragraph and insert:

**"(c) This section does not limit the individuals identified in section 2(b) of this chapter from:**

**(1) making a gift of all or any part of a decedent's body; or**

**(2) revoking a gift of all or any part of a decedent's body;**

**as provided in section 2(b) of this chapter.**

**(d) Actual notice obtained by:**

**(1) a recovery agency acting under section 3.5(a) of this chapter; or**

**(2) a hospital acting under section 3.5(b) of this chapter; of an individual's written anatomical gift that is made under section 2(a) of this chapter or IC 9-24-17 creates a rebuttable presumption that the individual made an anatomical gift for purposes of this section.**

**(e) Actual notice obtained by:**

**(1) a recovery agency acting under section 3.5(a) of this chapter; or**

**(2) a hospital acting under section 3.5(b) of this chapter; of an individual's written revocation of an anatomical gift that is made under section 2(a) of this chapter or IC 9-24-17 creates a rebuttable presumption that the individual revoked the anatomical gift for purposes of this section."**

Page 3, delete lines 1 through 7.

Page 3, line 8, delete "(e)" and insert **"(f)"**.

Page 3, between lines 10 and 11, begin a new paragraph and insert:

**"SECTION 2. IC 29-2-16-3.5 IS ADDED TO THE INDIANA**

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CODE AS A NEW SECTION TO READ AS FOLLOWS  
[EFFECTIVE JULY 1, 2001]: Sec. 3.5. (a) If:

- (1) a hospital's designated organ recovery agency determines that an individual whose death is imminent or who has died is medically suitable for organ donation;
- (2) a hospital's designated organ recovery agency, in the absence of alternative arrangements by the hospital, and:
  - (A) using the standards of a potential tissue and eye donor;
  - (B) using the notification protocol developed by the hospital; and
  - (C) consulting with the hospital's designated tissue recovery agency and eye recovery agency;
 determines that an individual whose death is imminent or who has died is medically suitable for tissue or eye donation;
- (3) a hospital's designated tissue recovery agency determines that an individual whose death is imminent or who has died is medically suitable for tissue donation; or
- (4) a hospital's designated eye tissue recovery agency determines that an individual whose death is imminent or who has died is medically suitable for eye donation;

the respective recovery agency shall attempt to ascertain whether the individual has made a written anatomical gift under section 2(a) of this chapter or under IC 9-24-17 and, if so, whether the individual has subsequently revoked the anatomical gift in writing. The recovery agency shall consult with the individuals identified in section 2(b) of this chapter who are reasonably available and may consult with any other sources that are available to the recovery agency.

(b) The recovery agency shall provide to the following any information obtained by the recovery agency under subsection (a):

- (1) The hospital.
- (2) The attending physician.
- (3) The physician who certified the individual's death if there is not an attending physician.

(c) A recovery agency identified in subsection (a) may enter into a written agreement with a hospital to allow the hospital to ascertain whether an individual made a written anatomical gift under subsection 2(a) of this chapter or IC 9-24-17 and whether any subsequent written revocation of the anatomical gift occurred.

(d) The hospital shall provide to the following any information obtained by the hospital under subsection (c):

- (1) The recovery agency.



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(2) The attending physician.

(3) The physician who certified the individual's death if there is not an attending physician.

(e) A hospital or a recovery agency is immune from civil liability for determining in good faith and in compliance with this section that:

(1) an individual made a written anatomical gift; or

(2) an individual subsequently made a written revocation of an anatomical gift."

Page 4, between lines 2 and 3, begin a new paragraph and insert:

"SECTION 4. IC 29-2-16-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 7.5. (a) The individual's attending physician, or, if none, the:

(1) physician that certifies the individual's death;

(2) hospital where the individual is admitted;

(3) hospital where the individual's remains are being kept; or

(4) individual identified in section 2 (b) of this chapter;

may petition the probate court in the county where the remains of the individual who is the subject to the petition are located, or the county in which the individual died, for the information referred to in subsection (b).

(b) A person identified in subsection (a) may petition the probate court specified in subsection (a) to determine whether the individual:

(1) made a written anatomical gift under section 2(a) of this chapter or IC 9-24-17, for purposes of section 2.5 of this chapter; or

(2) made a written revocation of an anatomical gift under section 2(a) of this chapter or under IC 9-24-17, for purposes of section 2.5 of this chapter.

(c) If the probate court determines under subsection (b) of this chapter that the individual made a written anatomical gift that was not subsequently revoked in writing by the individual, the court shall order that the anatomical gift of an organ, tissue, or an eye be recovered.

(d) The probate court may modify or waive notice and a hearing if the court determines that a delay would have a serious adverse effect on:

(1) the medical viability of the individual; or

(2) the viability of the individual's anatomical gift of an organ, tissue, or an eye."



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Page 4, line 3, delete "117.5" and insert "123.5".

Page 4, line 5, delete "117.5" and insert "**123.5**".

Page 4, after line 6, begin a new paragraph and insert:

"SECTION 6. IC 34-30-2-123.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 123.7. IC 29-2-16-3.5 (Concerning hospital and recovery agency immunity and anatomical gifts).**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1628 as printed February 15, 2001.)

BRAY, Chairperson

Committee Vote: Yeas 6, Nays 0.

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